

FILED

2013 JAN -8 PM 4:00  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES  
BY: \_\_\_\_\_

1 VENABLE LLP  
2 DANIEL S. SILVERMAN (SBN 137864)  
3 Email: dsilverman@venable.com  
4 2049 Century Park East, Suite 2100  
5 Los Angeles, CA 90067  
6 Telephone: (310) 229-9900  
7 Facsimile: (310) 229-9901

8 CANTOR COLBURN LLP  
9 William J. Cass (*Pro Hac Vice*)  
10 Email: wcass@cantorcolburn.com  
11 Keith J. Murphy (*Pro Hac Vice*)  
12 Email: kmurphy@cantorcolburn.com  
13 Andrew J. Ryan (*Pro Hac Vice*)  
14 Email: ryan@cantorcolburn.com  
15 20 Church Street, 22nd Floor  
16 Hartford, CT 06103  
17 Telephone: (860) 286-2929  
18 Facsimile: (860) 286-0115

19 CANTOR COLBURN LLP  
20 Jefferey B. Arnold (*Pro Hac Vice*)  
21 Email: jarnold@cantorcolburn.com  
22 1180 Peachtree Street, Suite 2050  
23 Atlanta, GA 30309  
24 Telephone: (404) 607-9991  
25 Facsimile: (404) 607-9981

26 Attorneys for Defendant and Counterclaimant  
27 REDEFINE NUTRITION, LLC

28 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

1 THERMOLIFE INTERNATIONAL,  
2 LLC,

3 Plaintiff,

4 v.

5 BETTER BODY SPORTS, LLC, et al.

6 Defendants.

CASE NO. CV12-09229 GAF (FFMx)

Hon. Gary A. Feess  
Courtroom 740

**DEFENDANT REDEFINE  
NUTRITION, LLC'S ANSWER TO  
PLAINTIFF'S COMPLAINT FOR  
PATENT INFRINGEMENT,  
AFFIRMATIVE DEFENSES,  
COUNTERCLAIMS AND DEMAND  
FOR JURY TRIAL**

Action Filed: October 26, 2012  
Trial Date: None set

1 REDEFINE NUTRITION, INC.  
2 Counterclaimant  
3 v.  
4 THERMOLIFE INTERNATIONAL,  
LLC,  
5 Counterdefendant.

6  
7 Now comes the Defendant and Counterclaimant, Redefine Nutrition, LLC  
8 (“Redefine Nutrition”), and for its answer, affirmative defenses and counterclaims,  
9 alleges as follows:

10 **I. THE PARTIES**

11 1. Redefine Nutrition is without information sufficient to form a belief as  
12 to the truth of the allegations in paragraph one of the Plaintiff’s Complaint and  
13 calls upon Plaintiff to prove the same.

14 2. Redefine Nutrition is without information sufficient to form a belief as  
15 to the truth of the allegations in paragraph two of the Plaintiff’s Complaint and  
16 calls upon Plaintiff to prove the same.

17 3. Redefine Nutrition is without information sufficient to form a belief as  
18 to the truth of the allegations in paragraph three of the Plaintiff’s Complaint and  
19 calls upon Plaintiff to prove the same.

20 4. Redefine Nutrition is without information sufficient to form a belief as  
21 to the truth of the allegations in paragraph four of the Plaintiff’s Complaint and  
22 calls upon Plaintiff to prove the same.

23 5. Redefine Nutrition is without information sufficient to form a belief as  
24 to the truth of the allegations in paragraph five of the Plaintiff’s Complaint and  
25 calls upon Plaintiff to prove the same.  
26  
27  
28

14. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fourteen of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

1           15. Redefine Nutrition is without information sufficient to form a belief as  
2 to the truth of the allegations in paragraph fifteen of the Plaintiff's Complaint and  
3 calls upon Plaintiff to prove the same.

4           16. Redefine Nutrition is without information sufficient to form a belief as  
5 to the truth of the allegations in paragraph sixteen of the Plaintiff's Complaint and  
6 calls upon Plaintiff to prove the same.

7           17. Admitted in part. Redefine Nutrition d/b/a Finaflex is a company  
8 organized and existing under the laws of Georgia. Redefine Nutrition has its  
9 principal place of business at 1190 Tidwell Road, Suite 304, Alpharetta, Georgia,  
10 30004.

11           18. Redefine Nutrition is without information sufficient to form a belief as  
12 to the truth of the allegations in paragraph eighteen of the Plaintiff's Complaint and  
13 calls upon Plaintiff to prove the same.

14           19. Redefine Nutrition is without information sufficient to form a belief as  
15 to the truth of the allegations in paragraph nineteen of the Plaintiff's Complaint and  
16 calls upon Plaintiff to prove the same.

17           20. Redefine Nutrition is without information sufficient to form a belief as  
18 to the truth of the allegations in paragraph twenty of the Plaintiff's Complaint and  
19 calls upon Plaintiff to prove the same.

20           21. Redefine Nutrition is without information sufficient to form a belief as  
21 to the truth of the allegations in paragraph twenty-one of the Plaintiff's Complaint  
22 and calls upon Plaintiff to prove the same.

## 23                           **II. JURISDICTION AND VENUE**

24           22. Admitted in part. Redefine Nutrition admits the complaint alleges an  
25 action for patent infringement under Title 35 of the United States Code. Redefine  
26 Nutrition is without information sufficient to form a belief as to the truth of the  
27  
28

1 allegations in paragraph twenty-two of the Plaintiff's Complaint and calls upon  
2 Plaintiff to prove the same.

3 23. Denied.

4 24. Redefine Nutrition is without information sufficient to form a belief as  
5 to the truth of the allegations set forth in paragraph twenty-four of the Plaintiff's  
6 Complaint and calls upon Plaintiff to prove the same.

7 25. Redefine Nutrition is without information sufficient to form a belief as  
8 to the truth of the allegations in paragraph twenty-five of the Plaintiff's Complaint  
9 and calls upon Plaintiff to prove the same.

### 10 **III. THE DEFENDANTS' INFRINGING PRODUCTS**

#### 11 **A. FACTS COMMON TO ALL INFRINGING PRODUCTS AND EACH** 12 **DEFENDANT**

13 26. Redefine Nutrition is without information sufficient to form a belief as  
14 to the truth of the allegations in paragraph twenty-six of the Plaintiff's Complaint  
15 and calls upon Plaintiff to prove the same.

16 27. Redefine Nutrition is without information sufficient to form a belief as  
17 to the truth of the allegations in paragraph twenty-seven of the Plaintiff's  
18 Complaint and calls upon Plaintiff to prove the same.

19 28. Redefine Nutrition is without information sufficient to form a belief as  
20 to the truth of the allegations in paragraph twenty-eight of the Plaintiff's Complaint  
21 and calls upon Plaintiff to prove the same.

22 29. Redefine Nutrition is without information sufficient to form a belief as  
23 to the truth of the allegations in paragraph twenty-nine of the Plaintiff's Complaint  
24 and calls upon Plaintiff to prove the same.

25 30. Redefine Nutrition is without information sufficient to form a belief as  
26 to the truth of the allegations in paragraph thirty of the Plaintiff's Complaint and  
27 calls upon Plaintiff to prove the same.

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

31. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-one of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

32. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-two of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

33. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-three of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

34. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-four of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

35. Denied.

36. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-six of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

37. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-seven of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

38. Denied.

## **B. PRODUCT-SPECIFIC DETAILS**

### **"D-Aspartic Acid" (Defendant Better Body Sports' Product)**

39. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-nine of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.



VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

40. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph forty of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Hyper FX" (One of Defendant BSN's Products)**

41. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph forty-one of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

42. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph forty-two of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

43. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph forty-three of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

44. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph forty-four of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Evotest" (Defendant BSN's Second Product)**

45. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph forty-five of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

46. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph forty-six of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

47. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph forty-seven of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

48. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph forty-eight of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"D-Aspartic Acid" (Defendant Allmax's Product)**

49. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph forty-nine of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

50. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

51. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty-one of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"DAA Pure" (Defendant Performance Edge's Product)**

52. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty-two of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

53. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty-three of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Propadrol" (Defendant EST Nutrition's Product)**

54. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty-four of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

55. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty-five of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.



VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

56. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty-six of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Bullasterone" (Defendant Hi-Tech's Product)**

57. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty-seven of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

58. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty-eight of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

59. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty-nine of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

60. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

61. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-one of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Dagger" (Defendant Infinite Labs' Product)**

62. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-two of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

63. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-three of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

64. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-four of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Intratest Xtreme (Defendant Lecheek's First Product)"**

65. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-five of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

66. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-six of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

67. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-seven of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Speed X3" (Defendant Lecheek's Second Product)"**

68. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-eight of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

69. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-nine of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

70. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**Testodol X9 (Defendant Lecheek's Third Product)"**

71. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-one of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

72. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-two of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

73. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-three of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"X-Fit Power" (Defendant MHP's Product)**

74. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-four of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

75. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-five of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

76. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-six of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

77. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-seven of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"NMDA" (Defendant Muscle Warfare's First Product)**

78. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-eight of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

79. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-nine of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"MOAB" (Defendant Muscle Warfare's Second Product)**

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

80. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

81. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-one of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Nuke" (Defendant Muscle Warfare's Third Product)**

82. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-two of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

83. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-three of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Napalm" (Defendant Muscle Warfare's Fourth Product)**

84. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-four of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

85. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-five of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"T-Up" (Defendant Nutrex's Product)**

86. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-six of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

87. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-seven of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

88. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-eight of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

89. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-nine of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Anabolic Freak" (Defendant Pharm Freak Product)**

90. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

91. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-one of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"D-pol" (Defendant Purus' Product)**

92. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-two of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

93. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-three of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

94. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-four of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

95. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-five of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Warrior" (Defendant Reaction's Product)**

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

96. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-six of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

97. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-seven of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

98. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-eight of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Vitality DM" (Defendant Reaction's Other Product)**

99. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-nine of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

100. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

101. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and one of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Pure Test" (Defendant Finaflex's Product)**

102. Admitted.

103. Redefine Nutrition admits in part that Defendant Lone Star is a distributor of Defendant Redefine Nutrition d/b/a Finaflex's products. Redefine Nutrition is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph one hundred and three of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.



VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

104. Redefine Nutrition admits in part that Defendant All Star is a retailer and distributor of Defendant Redefine Nutrition d/b/a Finaflex's products. Redefine Nutrition is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph one hundred and four of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

105. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and five of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Revolution PCT" (Defendant Finaflex's Second Product)**

106. Admitted.

107. Redefine Nutrition admits in part that Defendant Lone Star is a distributor of Defendant Redefine Nutrition d/b/a Finaflex's products. Redefine Nutrition is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph one hundred and seven of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

108. Redefine Nutrition admits in part that Defendant All Star is a retailer and distributor of Defendant Redefine Nutrition d/b/a Finaflex's products. Redefine Nutrition is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph one hundred and eight of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

109. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and nine of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

**"Ignite 2" (Defendant Finaflex's Third Product)**

110. Admitted.

111. Redefine Nutrition admits in part that Defendant Lone Star is a distributor of Defendant Redefine Nutrition d/b/a Finaflex's products. Redefine

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

1 Nutrition is without information sufficient to form a belief as to the truth of the  
2 remaining allegations in paragraph one hundred and eleven of the Plaintiff's  
3 Complaint and calls upon Plaintiff to prove the same.

4 112. Redefine Nutrition admits in part that Defendant All Star is a retailer  
5 and distributor of Defendant Redefine Nutrition d/b/a Finaflex's products.

6 Redefine Nutrition is without information sufficient to form a belief as to the truth  
7 of the remaining allegations in paragraph one hundred and twelve of the Plaintiff's  
8 Complaint and calls upon Plaintiff to prove the same.

9 113. Redefine Nutrition is without information sufficient to form a belief as  
10 to the truth of the allegations in paragraph one hundred and thirteen of the  
11 Plaintiff's Complaint and calls upon Plaintiff to prove the same.

12 **"V30+" (Defendant SNI's Product)**

13 114. Redefine Nutrition is without information sufficient to form a belief as  
14 to the truth of the allegations in paragraph one hundred and fourteen of the  
15 Plaintiff's Complaint and calls upon Plaintiff to prove the same.

16 115. Redefine Nutrition is without information sufficient to form a belief as  
17 to the truth of the allegations in paragraph one hundred and fifteen of the Plaintiff's  
18 Complaint and calls upon Plaintiff to prove the same.

19 **"D-Aspartic Acid" (Defendant Ethitech's Product)**

20 116. Redefine Nutrition is without information sufficient to form a belief as  
21 to the truth of the allegations in paragraph one hundred and sixteen of the  
22 Plaintiff's Complaint and calls upon Plaintiff to prove the same.

23 117. Redefine Nutrition is without information sufficient to form a belief as  
24 to the truth of the allegations in paragraph one hundred and seventeen of the  
25 Plaintiff's Complaint and calls upon Plaintiff to prove the same.

26 **IV. THE DEFENDANTS' INFRINGEMENTS**

27 118. Denied.

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

**A. DIRECT INFRINGEMENTS**

119. Denied.

120. Denied.

121. Denied.

**B. INDIRECT INFRINGEMENTS**

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

131. Redefine Nutrition admits that Plaintiff sent communications to Redefine Nutrition between June 2012 and October 2012 to notify them of the patent and their alleged infringements. Redefine Nutrition is without information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph one hundred and thirty-one of the Plaintiff's Complaint, and calls upon Plaintiff to prove the same.

132. Redefine Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and thirty-two of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

1 137. Denied.

2 138. Denied.

3 139. Denied.

4 **V. FIRST CAUSE OF ACTION**

5 **Infringement of U.S. Patent NO, 8,202,908**

6 140. Redefine Nutrition repeats and re-alleges its responses to the allegations  
7 of the foregoing paragraphs of this Complaint as if fully set forth herein.

8 141. Denied.

9 142. Denied.

10 143. Denied.

11 144. Denied.

12 145. Denied.

13 146. Denied.

14 147. Denied.

15 148. Denied.

16 149. Denied.

17 150. Denied.

18 151. Denied.

19 152. Denied.

20 153. Denied.

21 154. Denied.

22 155. Denied.

23 156. Denied.

24 157. Denied.

25 158. Denied.

26 159. Denied.

27 **AFFIRMATIVE DEFENSES**

1 **FIRST AFFIRMATIVE DEFENSE**

2 Plaintiff's Complaint fails to state a claim upon which relief may be granted.

3 **SECOND AFFIRMATIVE DEFENSE**

4 Redefine Nutrition has not engaged in any acts that would constitute  
5 infringement of any valid and enforceable patent in suit.

6 **THIRD AFFIRMATIVE DEFENSE**

7 The patent-in-suit is invalid for failure to comply with the statutory  
8 provisions for patentability and validity set forth Title 35 of the United States  
9 Code, including one or more of 35 U.S.C. §§ 101, 102, 103, 112, 115, 116 and  
10 256, for the following reasons:

11 a. The alleged invention was known or used by others in this country, or  
12 patented or described in a printed publication in this or a foreign country, more  
13 than one year prior to the date of the application for a patent in the United States.

14 b. The alleged invention was known or used by others in this country, or  
15 patented or described in a printed publication in this or a foreign country or in  
16 public use or on sale in this country, more than one year prior to the date of the  
17 application for patent in the United States.

18 c. The alleged invention was described in a patent granted on an  
19 application for a patent by another filed in the United States before the invention  
20 thereof by the alleged patentees, or on an international application by another  
21 which complied with the requisite statutes.

22 d. The patentees did not themselves invent the subject matter sought to  
23 be patented.

24 e. Before the alleged invention by the patentees the alleged invention  
25 was made in this country by another who had not abandoned, suppressed or  
26 concealed it.

1 f. The alleged invention was obvious at the time of the invention to a  
2 person having ordinary skill in the art.

3 g. The specifications of the patent does not comply with the  
4 requirements set forth in 35 U.S.C. §112, including but not limited to the best  
5 mode requirement and enablement requirement.

6 h. The patent does not particularly point out and distinctly claim the  
7 invention.

8 i. One or more of the correct inventors were not named on the asserted  
9 patent.

10 j. The inventor committed inequitable conduct before the United States  
11 Patent and Trademark Office during the prosecution of the '908 patent, as specified  
12 in greater detail below.

#### 13 **FOURTH AFFIRMATIVE DEFENSE**

14 Plaintiff is estopped from asserting a scope for the claims of the asserted  
15 patent-in-suit that would cover any product made, used, sold and/or offered for sale  
16 by Redefine Nutrition by representations, arguments, and/or amendments made  
17 during prosecution of the asserted patent before the PTO.

#### 18 **FIFTH AFFIRMATIVE DEFENSE**

19 Plaintiff is not entitled to any relief or recovery by reason of its coming into  
20 this Court with unclean hands in seeking to enforce patent that Plaintiff knew on  
21 information and belief to be invalid, unenforceable, and/or not infringed.

#### 22 **SIXTH AFFIRMATIVE DEFENSE**

23 Plaintiff is not entitled to any equitable relief or recovery because it has a  
24 full, complete and adequate remedy at law.

#### 25 **SEVENTH AFFIRMATIVE DEFENSE**

26 Plaintiff is not entitled to any equitable relief or recovery because it has  
27 unclean hands.



**COUNTERCLAIMS**

Pursuant to Federal Rule of Civil Procedure 13, Redefine Nutrition's Counterclaims against Plaintiff are as follows:

**THE PARTIES**

1. The co-Defendant/Plaintiff-in-Counterclaim, Redefine Nutrition, LLC d/b/a Finaflex, is a company organized and existing under the laws of Georgia with a principal place of business at 2955 Fantasy Lane in Decatur, Georgia, 30033-5818.

2. The Plaintiff/Defendant-in-Counterclaim allegedly is a limited liability company organized and existing under the laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice, California, 90291.

3. Defendant Better Body Sports, LLC is a named Defendant in this litigation.

4. Defendant Bio-Engineered Supplements and Nutrition, Inc. is a named Defendant in this litigation.

5. Defendant Allmax Nutrition Inc. is a named Defendant in this litigation.

6. Defendant Bronson Laboratories, Inc. d/b/a Performance Edge is a named Defendant in this litigation.

7. Defendant Engineered Sports Technology, LLC d/b/a EST Nutrition is a named Defendant in this litigation.

8. Defendant Hi-Tech Pharmaceuticals, Inc. d/b/a Hi-Tech is a named Defendant in this litigation.

9. Defendant Infinite Labs, LLC is a named Defendant in this litigation.

10. Defendant Lecheek, LLC is a named Defendant in this litigation.

11. Defendant Purus Labs, Inc. is a named Defendant in this litigation.

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

12. Defendant Muscle Warfare, Inc. is a named Defendant in this litigation.

13. Defendant Nutrex Research, Inc. is a named Defendant in this litigation.

14. Defendant PharmaFreak Holdings, Inc. is a named Defendant in this litigation.

15. Defendant Lone Star Distribution is a named Defendant in this litigation.

16. Defendant All Star Health is a named Defendant in this litigation.

17. Reaction Nutrition, LLC is a named Defendant in this litigation.

18. Defendant SNI, LLC is a named Defendant in this litigation.

19. Defendant Tiger Fitness, Inc. d/b/a Ethitech is a named Defendant in this litigation.

20. Maximum Human Performance, LLC is a named Defendant in this litigation.

### **JURISDICTION AND VENUE**

21. This counterclaim is brought pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201, et seq. The Complaint in this action alleges that Redefine Nutrition has infringed the patent-in-suit and gives rise to an actual case or controversy under 28 U.S.C. §§ 2201 and 2202.

22. This counterclaim arises under the patent laws of the United States, 35 U.S.C. § 1, et seq.

23. This Court has subject matter jurisdiction over this counterclaim pursuant to 28 U.S.C. §§ 1338, 2201, and 2202.

24. This Court has subject matter jurisdiction over this counterclaim pursuant to 28 U.S.C. §§ 1338, 2201, and 2202.

25. Venue for this Counterclaim in this District is proper under 28 U.S.C. §§ 1391 as this Counterclaim arises from the Complaint. Redefine Nutrition reserves the right to contest venue of the underlying action.

26. Redefine Nutrition is entitled to declaratory relief because, although Redefine Nutrition has not infringed and is not infringing the patent-in-suit, Redefine Nutrition will use accused apparatus and methods as claimed in the patent-in-suit after the patent-in-suit are declared not infringed, invalid, and/or unenforceable.

### **FACTUAL BACKGROUND**

27. On or about June 29, 2012, the United States Patent and Trademark Office issued U.S. Patent No. 8,202,908 (“the ‘908 patent”) entitled “D-Aspartic Acid Supplement,” indicating the inventor as Patrick Arnold and being assigned to Thermolife International, LLC. The Plaintiff asserts the named Defendants allegedly committed the tort of patent infringement within the State of California, and allegedly infringed the ‘908 patent by either shipping, selling, distributing, offering for sale, advertising, or continued to ship, distribute, offer for sale and advertise the accused products listed in Plaintiff’s Complaint in this judicial district.

### **COUNT I**

#### **(DECLARATORY JUDGMENT OF NON-INFRINGEMENT)**

28. Redefine Nutrition repeats and realleges Paragraphs 1 through 27 above, as though fully set forth herein.

29. Redefine Nutrition has not directly infringed and do not directly infringe any or all of the claims of the patent in suit under 35 U.S.C. § 271 (a).

30. Redefine Nutrition has not actively induced and does not actively induce infringement of any or all of claims of the patent in suit under 35 U.S.C. § 271 (b).

32. Redefine Nutrition is therefore entitled to a declaratory judgment that Redefine Nutrition does not directly or indirectly infringe any or all of the claims of the patent-in-suit and to such further injunctive relief as may be just and proper.

**(DECLARATORY JUDGMENT OF PATENT INVALIDITY)**

34. The patent-in-suit are invalid for failure to comply with the statutory provisions for patentability and validity set forth Title 35 of the United States Code, including one or more of 35 U.S.C. §§ 101, 102, 103, 112, 115, 116 and 256, for the following reasons:

b. The alleged invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

d. The patentees did not themselves invent the subject matter sought to be patented.

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

e. Before the alleged invention by the patentees the alleged invention was made in this country by another who had not abandoned, suppressed or concealed it.

f. The alleged invention was obvious at the time of the invention to a person having ordinary skill in the art.

g. The specifications of the patent does not comply with the requirements set forth in 35 U.S.C. §112, including but not limited to the best mode requirement and enablement requirement.

h. The patent does not particularly point out and distinctly claim the invention.

i. One or more of the correct inventors were not named on the asserted patent.

35. Redefine Nutrition is therefore entitled to a declaratory judgment that some or all of the claims of the patent-in-suit are invalid and to such further relief as may be just and proper.

### **COUNT III**

#### **(INEQUITABLE CONDUCT)**

36. Redefine Nutrition incorporates the allegations set forth in paragraphs 1 through 35 above by reference as if fully set forth herein.

37. D-aspartic acid is an enantiomer of aspartic acid and is known as dextrorotary aspartic acid or by the abbreviations (+)-aspartic acid, (d)-aspartic acid, or D-aspartic acid.

38. On or about March 28, 2008, Patrick Arnold submitted a provisional patent application to the United States Patent and Trademark Office (hereinafter the "Patent Office") for a D-Aspartic acid supplement. The application was assigned application no. 61/072,254.

1           40. On or about March 27, 2009, Patrick Arnold filed a formal patent  
2 application, application no. 12/383,682, which claimed priority to provisional  
3 patent application no. 61/072,254.

4           41. The asserted '908 patent issued from the formal patent application  
5 filed on March 27, 2009, application no. 12/383,682.

6           42. The asserted '908 patent lists Patrick Arnold as the sole inventor.

7           43. On or about March 29, 2009, the inventor, Patrick Arnold, executed a  
8 *Declaration and Power of Attorney*, in which he acknowledged, *inter alia*, "the  
9 duty to disclose information which is material to patentability as defined in 37  
10 C.F.R. § 1.56." The declaration was filed with the Patent Office.

11           44. In his patent application, no. 12/383682, Mr. Arnold represented to  
12 the Patent Office, *inter alia*, that:

13  
14           No studies have examined the effects of D-aspartic acid or N-methyl-D-  
15 aspartate on male humans. It is well known that different species of  
16 mammals often have different responses to hormones. Therefore, it is  
17 unknown whether, and to what degree, the administration of D-aspartic acid  
18 compounds in different ways and at different levels to male humans causes  
an increase in levels of testosterone, growth hormone, and insulin-like  
growth factor 1.

19           Accordingly, there is a demand for a method of improving the physical  
20 condition of adult male humans of all ages by increasing their levels of  
21 testosterone, growth hormone, and insulin-like growth factor 1 without the  
administration of hormones or prohormones.

22           45. In his patent application, no. 12/383682, Mr. Arnold represented to  
23 the Patent Office, *inter alia*, that:

24           One general object of this invention is to provide an improved method  
25 of enhancing the physical condition of adult male humans of all ages by  
26 increasing their levels of testosterone, growth hormone, and/or insulin-like  
27 growth factor 1 without the administration of hormones.  
28



1 I have invented a method of improving the physical condition of an  
2 adult male human. The method comprises administering an effective amount  
3 of a D-aspartic acid compound to an adult male human.

4 The method of this invention improves the physical condition of adult  
5 male humans of all ages by increasing their levels of testosterone, growth  
6 hormone, and/or insulin-like growth factor 1 without the administration of  
7 hormones. The method comprises the administration of D-aspartic acid  
8 and/or its biological equivalent derivate compounds. D-aspartic acid is a  
9 chemical that is present in the human body and is generally recognized as  
10 safe.

11 46. In his patent application, no. 12/383682, Mr. Arnold represented to  
12 the Patent Office, *inter alia*, that:

13 1. The Invention In General

14 The method of the invention comprises the administration of an effective  
15 amount of a D-aspartic acid compound to adult human males. It has been  
16 surprisingly found that the administration causes an increase in the levels of  
17 testosterone, growth hormone, and insulin-like growth factor 1. Increases in  
18 these hormones cause, in turn, an improvement in the physical condition of  
19 the males.

20 2. The D-Aspartic Acid Compound

21 Suitable D-aspartic acid compounds include D-aspartic acid, D-aspartate  
22 salts, D-aspartate esters, and other functionally equivalent derivatives such  
23 as N-methyl-D-aspartic acid. The D-aspartic acid compound is suitable in its  
24 enantiomeric form or as the racemic mixture. The preferred compound is  
25 DL-aspartic acid because of its ready availability and low cost.

26 3. Administration

27 The D-aspartic acid compound is administered in any known way that  
28 results in the compound entering the bloodstream. For example, the  
compound is orally ingested, injected directly into the bloodstream,  
administered via patches, and the like. The preferred method of  
administration is by oral ingestion. D-aspartic acid is well tolerated and is  
effectively taken into the bloodstream through the digestive tract.

The D-aspartic acid compound is conveniently ingested as a powder or is  
dissolved in a suitable liquid. For example, D-aspartic acid has substantial  
solubility in water and is well suited for addition to conventional aqueous

1 beverages. The D-aspartic acid may have synergistic results with other  
 2 common nutritional supplements, such as androst-4-ene-3,6,17-trione,  
 3 marketed as 6-OXO supplement by Proviant Technologies, Inc. of  
 Champaign, Ill.

#### 4 4. Effective Amount

5 The D-aspartic acid compound is administered in an amount that is effective  
 6 to increase the levels of testosterone, growth hormone, and/or insulin-like  
 7 growth factor 1 in the recipient. In general, the D-aspartic acid compound is  
 8 administered in an amount of about 1 to 100 grams per day, preferably about  
 9 1 to 20 grams per day, and most preferably about 5 to 10 grams per day,  
 10 computed on the basis of equivalent molar amount of D-aspartic acid. In  
 11 other words, if the DL-aspartic acid racemic modification is used, the  
 amounts are doubled. If a derivative is used having a molecular weight ten  
 percent greater than that of D-aspartic acid, the amounts are increased by ten  
 percent to provide the same equivalent molar amount.

#### 12 5. Benefits

13 The administration of an effective amount of a D-aspartic acid compound  
 14 has many beneficial effects on adult male humans. The administration  
 15 causes an increase in the levels of testosterone, growth hormone, and/or  
 16 insulin-like growth factor 1 in the recipient, regardless of age. The increases  
 17 in these hormones, in turn, are believed to cause a large number of  
 18 improvements in physical condition, including an increase in muscle mass,  
 an increase in strength, a decrease in fat, and a reduction in various aging  
 characteristics. Increases in these hormones are also believed to cause an  
 improvement in sexual performance.

19 47. The pending patent claims in the application, no. 12/383,682, were  
 20 originally stated as follows:

- 21 1. A method of improving the physical condition of an adult male  
 22 human, the method comprising administering an effective amount of a D-  
 aspartic acid compound to an adult male human.
- 23 2. The method of claim 1 wherein the D-aspartic acid compound is  
 administered by oral ingestion.
- 24 3. The method of claim 2 wherein the D-aspartic acid compound is  
 25 administered in an amount of about 1 to 20 grams of D-aspartic acid  
 equivalent.
- 26 4. The method of claim 3 wherein the D-aspartic acid compound is  
 27 administered as a racemic mixture.

1        5. The method of claim 1 wherein the D-aspartic acid compound  
 2        comprises D-aspartic acid.

3        6. The method of claim 1 wherein the D-aspartic acid compound  
 4        comprises N-methyl-D-aspartic acid.

5        7. The method of claim 1 wherein the D-aspartic acid compound  
 6        comprises a salt or an ester of D-aspartic acid.

7        8. A method of improving the physical condition of an adult male human  
 8        increasing his levels of testosterone, growth hormone, and/or insulin-like  
 9        growth factor 1, the method comprising administering an effective amount  
 10       of a D-aspartic acid compound to an adult male human.

11       48. On or about June 7, 2011, the Patent Office issued an Office Action  
 12       Summary, and rejected the pending claims. The examiner noted claims 1 – 8 were  
 13       rejected under 35 U.S.C. § 103(a) as being unpatentable over Estienne *et al.*, U.S.  
 14       Patent No. 5,691,377. The examiner rejected claims 1 – 8 under 35 U.S.C. §  
 15       103(a) as being unpatentable over Simone, U.S. Patent No. 5,397,786, in view of  
 16       Pantaleone *et al.*, U.S. Patent No. 5,834,259, and further view of Estienne *et al.*,  
 17       U.S. Patent No. 5,691,377. The examiner rejected Claims 1-5, 7 and 8 under 35  
 18       U.S. C. 103(a) as being unpatentable over Estienne *et al.* (U.S. 5,691,377) in view  
 19       of Pantaleone *et al.* (U.S. 5,834,259). The examiner also rejected claim 1 – 8  
 20       under 35 U.S. C. 103(a) as being unpatentable over D’Aniello (Applicant cited  
 21       IDS: Brain Research Reviews, 2007, 53, 215 – 234).

22       49. On or about December 7, 2011, the inventor, through his counsel,  
 23       filed a Response to Office Action Dated June 7, 2011. In the response, the  
 24       inventor, through his counsel, represented that there was no teaching or suggestion  
 25       from the prior art cited to increase testosterone levels in human males with the  
 26       administration of D-aspartic acid. In particular, the inventor, stated, inter alia:

27       D’Aniello describes the effect of intravenous administration of D-  
 28       aspartic acid in rats. This results in increase in LH and testosterone in rats.  
 However, the Examiner makes two false assumptions here: 1) That intra-  
 peritoneal administration should have the same effect as oral administration;  
 and 2) That if something is effective on rats it should have the same effect  
 on humans.

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

1 For the first false assumption, a lot of drugs have no effect when  
2 administered orally due to low absorption/bioavailability, extensive  
3 metabolism, destruction in stomach acidic, p.h., inability to reach target  
4 tissues, inability to reach high enough blood concentrations, etc. Therefore,  
5 they exist only in injectable forms. Examples include Heparin,  
6 Adrenaline (an aminoacid metabolite), benzylpenicilline, etc. Thousands of  
7 examples can be found. The use of a compound parenterally does in no way  
8 make obvious its use for the same purpose orally nor does it make obvious  
9 the dosing scheme and regime to achieve results.

10 For the second false assumption, if we were to assume that rat studies  
11 had the same effect on humans, no human clinical trials would exist. Many,  
12 many drugs and supplements despite showing promising results in rats show  
13 disappointment or even opposite results in humans. . .

14 Thus, in no way does the effect of the compound on rats render  
15 obvious its therapeutic use in humans . . .

16 50. On or about December 7, 2011, the inventor, through his counsel,  
17 filed a Response to Office Action Dated June 7, 2011. In the response, the  
18 inventor, through his counsel, represented:

19 The applicant, prior to applying for the patent, conducted research to prove  
20 D-aspartic acid does indeed increase testosterone levels in humans and  
21 established a dosing regime. This by itself is true research and the patent  
22 office should endorse it as it promotes invention. . .

23 The applicants findings are further confirmed by the following study, which  
24 further proved the applicant did indeed spend time and money to research  
25 the compound before applying [citing *The Role and Molecular mechanism*  
26 *of D-aspartic Acid in the Release and Synthesis of L.H. and Testosterone in*  
27 *Humans and Rats*, Enza Topo et al, Reproductive Biology Endocrinology,  
28 2009; 7:120.]

51. On or about December 22, 2011, the inventor, through his counsel, filed  
a Supplemental Response to Office Action Dated June 7, 2011. In the response,  
the inventor, through his counsel, represented:

In addition to what was already submitted in the Response filed  
December 7, 2011 (hereby incorporated by reference), Applicant notes the  
following.

D'Aniello describes the effect of intravenous administration of D-  
aspartic acid in rats. This results in increase in L.H and testosterone in rats.  
However, the Examiner makes two false assumptions here: 1) That intra-  
peritoneal administration should have the same effect as oral administration;  
and 2) That if something is effective on rats it should have the same effect  
on humans. . .

1 In addition as we previously stated, the researchers of the foregoing  
 2 study themselves exclaimed at the beginning of the study in the background  
 3 section that (emphasis added) [citing *The Role and Molecular mechanism of*  
*D-aspartic Acid in the Release and Synthesis of L.H. and Testosterone in*  
*Humans and Rats*, Enza Topo et al, Reproductive Biology Endocrinology,  
 2009; 7:120]:

4 “Although numerous studies have been conducted on this  
 5 matter, no investigations have been until now on the effects of D-Asp  
 6 on the secretion of LH and testosterone in humans, and neither has the  
 molecular mechanism by which D-Asp triggers its action in the  
 synthesis and release of hormones investigated”

7 By their very own words the effects of DAA at the time of the study  
 8 (almost two years after the priority date of the present patent application) on  
 LH and testosterone secretion in HUMANS remained unknown.

9 52. On or about January 12, 2012, the Patent Office issued a final  
 10 rejection in an Office Action mailed on January 17, 2012. The examiner noted  
 11 claims 1 – 5, 7, 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable  
 12 over Estienne *et al.*, U.S. Patent No. 5,691,377, in view of Pantaleone *et al.*, U.S.  
 13 Patent No. 5,834,259.

14 The examiner rejected claims 1 – 5, 7, 8 under 35 U.S.C. § 103(a) as being  
 15 unpatentable over Simone, U.S. Patent No. 5,397,786, in view of Pantaleone *et al.*,  
 16 U.S. Patent No. 5,834,259. The examiner also rejected claim 1 – 5, 7, 8 under 35  
 17 U.S. C. 103(a) as being unpatentable over D’Aniello (Applicant cited IDS: Brain  
 18 Research Reviews, 2007, 53, 215 – 234).

19 53. On or about April 17, 2012, the inventor, through his counsel, filed an  
 20 Amendment After Final Rejection, wherein he amended claim 1 and 3, and  
 21 cancelled claims 2, and 5 – 8. Claim 1 was amended, *inter alia*, to include the  
 22 Markush group “selected from the group consisting of D-aspartic acid, D-Aspartate  
 23 salts, and D-aspartate esters” purportedly to distinguish the prior art.

24 54. On or about April 17, 2012, the inventor, through his counsel, made  
 25 the following statements, *inter alia*, to the Patent Office:

26 This study/article is not prior art. Therefore, because it is peer reviewed,  
 27 scrutinized, etc. this article is strong evidence that the present invention is  
 not obvious, [citing *The Role and Molecular mechanism of D-aspartic Acid*



VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

1 *in the Release and Synthesis of L.H. and Testosterone in Humans and Rats*,  
Enza Topo et al, Reproductive Biology Endocrinology, 2009; 7:120] . . .

2 Thus, by their very own words the effects of DAA at the time of the study  
3 (almost two years after the priority date of the patent application) on LH and  
testosterone secretion on HUMANS remained unknown. . .

4 The examiner argues because NMDA is an analog compound of D-aspartic  
5 Acid a person of ordinary skill in the art would be motivated use [sic] for the  
6 same purposes. The examiner further argues (without evidence whatsoever  
7 placed on the record) that they are the “same compound”, and that NMDA  
(even though not taught in Estiene) would increase levels of testosterone,  
growth hormone, and/or insulin-like growth factor 1 as Applicant claimed  
for D-Aspartic acid in Claim 8. . .

8 Claim 1 has been amended. Among other things, claim 1 includes the  
9 Markush group “a D-aspartic acid, D-Aspartate salts, and D-aspartate  
esters” . . .

10 Moreover the presumption of obvious based on a reference disclosing  
11 structurally similar compounds may be overcome where there is a showing  
there is no reasonable expectation of similar properties in structurally similar  
12 compounds . . . [emphasis in the original]

13 As evidence that there is no reasonable expectation of similar properties in  
DAA as compared to NMDA . . .

14 55. On or about May 10, 2012, the Patent Office issued Notice of  
15 Allowance. In the Notice, the examiner stated several “Reasons for Allowance,”  
16 including, inter alia:

17 Applicant’s arguments have been fully considered and found persuasive . . .

18 The closest prior art are Estienne (U.S. 5,591,377), Simone (US 5,397,786)  
19 and D’Aniello (Applicant cited IDS: Brain Research Reviews, 2007, 53,  
215-234) . . .

20 The prior art D’Aniello (Brain Research Reviews, 2007) does not describe  
21 oral administration of D-Asp or do not teach administration of D-Asp to  
humans. The effect of D-Asp at the time of the instant application was filed  
22 on LH and testosterone secretion on humans remained unknown.

23 56. At all times relevant thereto, the arguments made to the Patent Office  
24 during the prosecution of the ‘908 patent to overcome the various prior art  
25 rejections were made to convince the Patent Office that the effect of D-aspartic at  
26 the time of the patent application was filed on LH and testosterone secretion on  
27 humans remained unknown.



1           57. At all times relevant hereto, the inventor, Patrick Arnold, frequently  
2 commented on the internet concerning the topics of fitness and supplements,  
3 including methods of increasing testosterone.

4           58. On or about October 10, 1996, in an on-line discussion concerning the  
5 “Best Way to Legally Increase Testosterone?”, the inventor Patrick Arnold  
6 disclosed “D-aspartic acid (or N-methyl-D-aspartate.” This statement was publicly  
7 posted in a forum specifically addressing “good, safe and legal methods of  
8 increasing testosterone” in human males.

9           59. At all times relevant hereto, the arguments made to the Patent Office  
10 during the prosecution of the ‘908 patent to convince the Patent Office that the  
11 effect of D-aspartic at the time of the patent application was filed on LH and  
12 testosterone secretion on humans remained unknown were false and deceptive.

13           60. At all times relevant hereto, the statements made to the Patent Office  
14 in the application(s) that matured into ‘908 patent that the effect of D-aspartic at  
15 the time of the patent application was filed on LH and testosterone secretion on  
16 humans remained unknown were false and deceptive.

17           61. At all times relevant hereto, during the prosecution of the ‘908 patent,  
18 the inventor, Patrick Arnold, withheld information material to the patentability  
19 concerning the subject matter of the ‘908 patent, including but not limited to,  
20 whether the effect of D-aspartic at the time of the patent application was filed on  
21 LH and testosterone secretion on humans remained unknown.

22           62. The inventor, Patrick Arnold, publically disclosed in a printed media  
23 on October 10, 1996, that D-aspartic acid and N-methyl-D-aspartate increases  
24 testosterone, such statement was material to patentability, and Mr. Arnold failed to  
25 report this public disclosure to the Patent Office, which was his duty under 37  
26 C.F.R. § 1.56.

63. At all times relevant hereto, the above recited acts constituted fraud and/or inequitable conduct in the proceedings before the Patent Office during the prosecution of the '908 patent.

64. Redefine Nutrition is therefore entitled to judgment that the '908 patent is unenforceable, a declaration that this case is exceptional in favor of Redefine Nutrition under 35 U.S.C. § 285 and that Redefine Nutrition be awarded its reasonable attorneys' fees and expenses.

### **PRAYER FOR RELIEF**

WHEREFORE, Redefine Nutrition prays for the following relief:

A. That Judgment be entered in favor of Redefine Nutrition and against Plaintiff on each and every count of the Complaint and on each and every count of its Counterclaim;

B. That Judgment be entered declaring that neither Redefine Nutrition nor the Redefine Nutrition's products have not infringed the '908 patent;

C. That Judgment be entered declaring that Plaintiff is equitably estopped from alleging infringement of the '908 patent;

D. That Judgment be entered declaring that Plaintiff is precluded from obtaining injunctive relief, money damages, costs, and/or attorneys' fees for any alleged infringement by Redefine Nutrition and/or the Redefine Nutrition's products;

E. That Judgment be entered declaring the claims of the '908 patent invalid;

F. That Judgment be entered permanently enjoining and restraining Plaintiff, its officers, agents, servants, employees and attorneys, and all others acting for, on behalf of, or in active concert or participation with any of them, from stating, implying, or suggesting that infringes the patent-in-suit;

1 G. That Judgment be entered declaring that this case is exceptional in favor  
2 of Redefine Nutrition under 35 U.S.C. § 285 and that Redefine Nutrition be  
3 awarded its reasonable attorneys' fees and expenses;

4 H. That Redefine Nutrition be awarded its costs in this action; and

5 I. That Redefine Nutrition be awarded such other and further relief as the  
6 Court may deem just and proper.

7 ///

8 ///

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

**DEMAND FOR JURY TRIAL**

Redefine Nutrition demands a trial by jury of all issues so triable in this action.

Dated: January 3, 2013


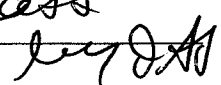
VENABLE LLP

By:   
Daniel S. Silverman

And

Dated: January 3, 2013

CANTOR COLBURN LLP

By:   
William J. Cass 

Attorneys for Defendant and  
Counterclaimant  
REDEFINE NUTRITION, LLC

VENABLE LLP  
2049 CENTURY PARK EAST, SUITE 2100  
LOS ANGELES, CA 90067  
310-229-9900

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 2049 Century Park East, Suite 2100, Los Angeles, California.

On **January 8, 2013**, I served a copy ☒ / original ☐ of the foregoing document(s) described as **DEFENDANT REDEFINE NUTRITION LLC'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT, AFFIRMATIVE DEFENSES, COUNTERCLAIMS AND DEMAND FOR JURY TRIAL** on the interested parties in this action addressed as follows

SEE ATTACHED MAILING LIST

☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☒ **BY MAIL (FRCP 5(b)(1)(C)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on January 8, 2013, at Los Angeles, California.

  
\_\_\_\_\_  
Jan Contreras

**MAILING LIST**

Richard H. Hikida  
 Scott J. Ferrell  
 Tyler J. Woods  
 Newport Trial Group  
 895 Dove Street, Suite 425  
 Newport Beach, CA 92660

*Attorneys for Plaintiff*

Eric Anvari  
 Law Office of Eric Anvari  
 21112 Ventura Blvd.  
 Woodland Hills, CA 91364-2103

*Attorneys for Infinite Labs LLC*

Shyam Dixit  
 Dixit Law Firm PA  
 3030 North Rocky Point Drive West  
 Suite 260  
 Tampa, FL 33607

Derek A. Newman  
 Newman Du Wors LLP  
 100 Wilshire blvd., Suite 950  
 Santa Monica, CA 90401

*Attorneys for Muscle Warfare, Inc.*

William E. Thomson, Jr.  
 Brooks Kushman PC  
 601 South Figueroa Street  
 Suite 2080  
 Los Angeles, CA 90017-5726

*Attorneys for SNI LLC*